



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**DISSENTING OPINION OF COMMISSIONER DAVID MASON
RE: ADVISORY OPINION 2005-02**

I support all of the conclusions in Advisory Opinion 2005-02 except the implicit conclusion that the annual limit for contributions to local political party committees affiliated with state political party committees is \$10,000. See Advisory Opinion 2005-02 at 9-10. As is explained below, the annual limit is \$5,000 for contributions to all local political party committees.

The Federal Election Campaign Act establishes contribution limits and provides:

(a) Dollar limits on contributions

(1) Except as provided in subsection (i) of this section and section 441a-1 of this title, no person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$25,000;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed \$5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed \$10,000.

2 U.S.C. § 441a(a)(1) (2002); *see also* 11 C.F.R. § 110.1(a)-(d) (2003). These amounts are indexed for inflation. *See* 2 U.S.C. 441a(c) (2002); 11 C.F.R. § 110.1(b)-(d).

Both the statute and the regulations treat state party committees and local party committees differently. Different limits apply to contributions to local committees than apply to state committees:

- After discussing limits on contributions to candidates and national-party committees, *see* 2 U.S.C. § 441a(a)(1)(A), (B), the statute establishes a \$10,000 annual limit for contributions to political committees established and maintained by a state committee. *See id.* (D). Similarly, the regulations provide that “no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed \$10,000.” 11 C.F.R. § 110.1(c)(5).

- The statute separately establishes a \$5,000 annual limit for contributions to any other political committee. See 2 U.S.C. § 441a(a)(1)(C). Similarly, the regulations provide that “[n]o person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.” 11 C.F.R. § 110.1(d). The phrase “any other political committee” in 2 U.S.C. 441a(a)(1)(C) and 11 C.F.R. § 110.1(d) applies to all local committees of political parties.

Because the statute includes a definition of state party committee (2 U.S.C. § 431(15), and in various places separately addresses district and local party committees, § 441a(a)(1)(D) (\$10,000 limit for state party committees) cannot, on its face, be read to apply to district or local party committees. Indeed, prior to passage of BCRA, state party committees were subject to the 441a(a)(1)(C) limit (\$5,000) applied to “any other political committee.”

New 441a(c)(1)(D) explicitly addresses “a State committee of a political party.” In contrast, other BCRA provisions addressed “State, district, and local committees” (see 441i(b)), yet others address “State or national” committees (see 441a(i)(1)(C)(iii)(III)), others national committees only (441i(a)) and still others “national, State, district or local” committees (441i(d)).

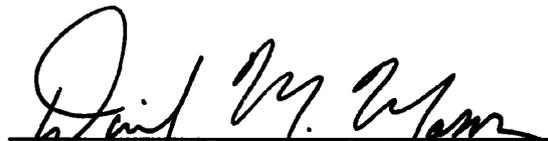
The drafters of BCRA showed an acute awareness of the distinctions among national, state, and local party committees, addressing different restrictions and permissions to each category, separately or in selective combination with other categories. Thus, in the context of BCRA, we cannot interpret a provision addressed to State committees to also (*sub silentio*) apply to district or local committees.

Commentors and my colleagues point to the transfer and aggregation provisions (441a(a)(4) and (5)) as effectively collapsing the finances of state committees with affiliated local committees. However, 441a(a)(4) permits unlimited transfers among national, state, district, or local committees of the same political party despite the substantially different contribution limits for national and state committees. Thus, this provision cannot be read as having the effect of applying the limit for State committees to any other types of committee. Section 441a(a)(5) and our implementing regulations at 11 C.F.R. § 110.3(b) establish the general rule that contributions made or received by affiliated political committees are “considered to have been made by a single political committee,” with an exception allowing separate limits for national and state committees. This provision also has no bearing on whether different limits apply for contributions to state versus local committees.

Because the annual limit on contributions to local political-party committees is \$5,000, it is incorrect for the Commission to conclude implicitly that a \$10,000 annual contribution limit applies to such committees.

Except for this point, I agree with Advisory Opinion 2005-02.

4/21/05
Date


David M. Mason, Commissioner